

**CAMMARATA, NULTY & GARRIGAN, L.L.C.**  
**Jeffrey G. Garrigan, Esq. (029301989)**  
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 Attorneys for Plaintiff

Plaintiff,	:	
	:	SUPERIOR COURT OF NEW JERSEY
<b>KELLY CHESLER</b>	:	LAW DIVISION: HUDSON COUNTY
	:	Docket No.
vs.	:	
	:	
Defendants,	:	
	:	
<b>CITY OF JERSEY CITY; CITY OF JERSEY:</b>	:	Civil Action
<b>COUNCIL; CITY OF JERSEY CITY</b>	:	
<b>BUSINESS ADMINISTRATOR, MARK</b>	:	
<b>BUNBURY, (in his official capacity):</b>	:	
<b>CHIEF OF POLICE MICHAEL KELLY (in</b>	:	
<b>his official capacity); MAYOR</b>	:	
<b>STEVEN M. FULOP, (in his official</b>	:	<u>COMPLAINT IN LIEU OF</u>
<b>capacity)</b>	:	<u>PREROGATIVE WRIT</u>

The plaintiff, Kelly Chesler ("Chesler" or "Plaintiff"), by way of complaint against the defendants, says:

1. The plaintiff was employed as a police officer with the City of Jersey City Police Department ("Police Department") and held the rank of Lieutenant.

2. The City of Jersey City ("City") is located at 280 Grove Street, Jersey City, New Jersey.

3. The City of Jersey City Council ("Council") is the governing legislative body for the City under the Faulkner Act. The Council's business office is located at 280 Grove Street, Jersey City, New Jersey.

4. Mark Bunbury is the Business Administrator for the City of Jersey City ("Business Administrator") with offices at 280 Grove Street, Jersey City, New Jersey.

5. Chief of Police Michael Kelly ("Chief") is the Police Chief of the Police Department with offices at One Journal Square Plaza, Jersey City, New Jersey.

6. Mayor Steven M. Fulop ("Mayor") is the Mayor of the City of Jersey City with offices at 280 Grove Street, Jersey City, New Jersey.

#### JURISDICTION AND VENUE

7. This Court has jurisdiction to review the defendant municipality's decision with respect to the police-related employment matters by virtue of Rule 4:69-1; and N.J.S.A. 40A:14-147 et seq.

8. The Police Department is located within Hudson County and all relevant acts occurred in Hudson County in violation of New Jersey statutes, New Jersey common law, and/or the Constitution of the State of New Jersey.

#### FACTS

9. On June 14, 2016 Indictment No. 16-06-0838 was filed against Chesler who at that time was a lieutenant with the City of Jersey City Police Department. Three other individuals were charged; Captain Joseph Ascolese, P.O. Michael O'Neill and P.O. Michael Maietti.

10. The indictment consisted of 107 counts as to all of the officers. Specifically, Plaintiff Chesler was charged with twenty counts consisting of Conspiracy to Commit Theft by Deception; Theft by Deception; Falsifying Records; Official Misconduct; and Pattern of Official Misconduct. Numerous counts were dismissed by the State prior to trial and the remainder dismissed during trial on the State's own motion. [Exhibit A].

11. As a result of the indictment, on June 14, 2016, Chesler was served with a Notice of Immediate Suspension Without Pay issued by Lt. Miller of the Police Department. Thereafter, Chesler was served with a Preliminary Notice of Disciplinary Action dated June 14, 2016. [Exhibit B].

12. On June 15, 2016 a letter was sent to Robert Kakoleski City Administrator for the City pursuant to N.J.S.A. 40A:14-155 demanding that the City provide the means for Chesler's defense to the indictment. [Exhibit C]. On June 22, 2016 a response was received from Assistant Corporation Counsel for the City, Megan L. Morey, Esq., denying the request for means for a defense. [Exhibit D].

13. On or about July 7, 2016 Chesler was served with a Final Notice of Disciplinary Action confirming the suspension without pay pending the conclusion of the criminal case. [Exhibit E].

14. On September 5, 2018 a trial of the criminal charges against Chesler commenced before the Honorable Mirtha Ospina,

J.S.C.. On October 23, 2018 Indictment No. 16-06-0838 was dismissed as a result the State's motion to dismiss all charges based on its admitted failure to be able to prove any criminal wrongdoing on the part of Chesler.

15. A further request was made for backpay and reimbursement of attorney's fees and costs in connection with defense of the criminal action by letter dated October 24, 2018 to the City Clerk, Robert Byrne. [Exhibit F].

16. By letter dated November 7, 2018 to Assistant Corporation Counsel, Scott W. Carbone, Esq., Plaintiff's attorney did not object to the City's request for more time to review the matter. Additionally, Plaintiff provided financial information requested by the City on the backpay issue. As of the filing of this complaint, the City has refused and/or failed to reimburse Chesler for legal fees and costs in defense of the criminal matter or the departmental disciplinary proceeding. [Exhibit G]. Defendants have also refused and/or failed to pay backpay or otherwise make Plaintiff whole.

#### COUNT ONE

17. Plaintiff repeats and reiterates the allegations contained in paragraphs 1 to 16 as though fully set forth herein.

18. N.J.S.A. 40A:14-155 provides:

Whenever a member or officer of a municipal police department or force is a defendant in any action or legal proceeding arising out of and directly related to the lawful exercise of police powers in the furtherance of

his official duties, the governing body of the municipality shall provide said member or officer with necessary means for the defense of such action or proceeding, but not for his defense in a disciplinary proceeding instituted against him by the municipality or in criminal proceeding instituted as a result of a complaint on behalf of the municipality. If any such disciplinary or criminal proceeding instituted by or on complaint of the municipality shall be dismissed or finally determined in favor of the member or officer, he shall be reimbursed for the expense of his defense.

19. At all times, plaintiff Chesler's actions arose out of and were directly related to the lawful exercise of her police powers in the furtherance of her official duties.

20. By refusing to provide a means for her defense and subsequently refusing to reimburse Chesler despite the dismissal of all criminal charges, the defendants are in willful violation of New Jersey law, injuring plaintiff.

#### COUNT TWO

21. Plaintiff repeats and reiterates the allegations contained in paragraphs 1 to 20 as though fully set forth herein.

22. N.J.S.A. 40A:14-149.2 provides:

If a suspended police officer is found not guilty at trial, the charges are dismissed or the prosecution is terminated, said officer shall be reinstated to his position and shall be entitled to recover all pay withheld during the period of suspension subject to any disciplinary proceedings or disciplinary action.

23. Plaintiff has been reinstated to her position with the City of Jersey City Police Department. However, defendants have failed to make Plaintiff whole and provide her with all pay withheld.

WHEREFORE, Plaintiff, Kelly Chesler, demands judgment against the Defendants as follows:

- (A) Reimbursing Chesler for all attorney's fees and costs pursuant to N.J.S.A. 40A:14-155;
- (B) Reimbursing Chesler for all lost pay, benefits, and other damages during the pendency of her suspension without pay pursuant to N.J.S.A. 40A:14-149.2;
- (C) Such other relief as this Court deems just and equitable.

DATED: November 29, 2018

CAMMARATA, NULTY & GARRIGAN, L.L.C.  
Attorneys for Plaintiff

BY:

  
JEFFREY G. GARRIGAN, ESQ.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, Jeffrey G. Garrigan, Esq., is hereby designed as trial counsel in this matter.

CERTIFICATION PURSUANT TO R.4:5-1

I certify that the matter in controversy in the within action is the subject of another action pending entitled Michael O'Neill v. Jersey City, bearing Docket No. HUD-L-4693-18. At this time, there are no additional parties who should be joined in this action. R. 4:5-1. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

I certify that the foregoing statements made by me are true.  
I am aware that if any of the foregoing statements made by me are  
wilfully false, I am subject to punishment.

DATED: November 29, 2018

CAMMARATA, NULTY & GARRIGAN, L.L.C.  
Attorneys for Plaintiff

BY:

  
JEFFREY G. GARRIGAN, ESQ.

CERTIFICATION PURSUANT TO R.4:69-4

Pursuant to Rule 4:69-4, I hereby certify that to my knowledge  
there are no transcripts with respect to the underlying local  
agency decision.

I certify that the foregoing statements made by me are true.  
I am aware that if any of the foregoing statements made by me are  
wilfully false, I am subject to punishment.

DATED: November 29, 2018

CAMMARATA, NULTY & GARRIGAN, L.L.C.  
Attorneys for Plaintiff

BY:

  
JEFFREY G. GARRIGAN, ESQ.